REVIEWS

FINANCING THE WAR. A symposium conducted by the Tax Institute. Philadelphia: The Tax Institute, 1942. Pp. ix, 357. $2.50.

A VOLUME which contains, as this one does, the contributions of eighteen different economists usually offers abundant grist for the mills of those who contend that economics is a socially worthless subject since no two of its practitioners ever agree. The complaint is never more than a rather naive half-truth, and in the present instance no support is to be found even for the sometimes valid half. For there is in these eighteen essays a remarkable degree of unanimity on fundamental matters that were very improperly understood in the difficult years from 1914 to 1918. Indeed one of the few encouraging aspects of this war is that for once economists everywhere are in virtually unanimous agreement in their recommendations concerning public policy. There are of course differences of opinion on matters of method and procedure whose importance the contending parties have a professional interest in exaggerating. But these controversies generally break out in the superstructure of the analysis. The main pillars of the argument, erected only fairly recently, support a platform on which nearly all economists stand together.

This common foundation is very well described in the two articles which constitute Part One of "Financing the War." In these articles, one by Robert Warren of Princeton, the other by Homer Jones of the F.D.I.C., a conception of the role of war finance is developed which is much broader than that we would have expected from tax experts twenty years ago. The emphasis is no longer on how to provide funds with which the Treasury can "pay for the war." The function of federal fiscal policy is recognized to be no less than that of directing the flow of spending in the economy in such a way as to secure maximum war production with a minimum of dislocation and injustice, especially of those types of dislocation which accompany an inflation. There is a clear statement of the terrific strains which a war program imposes on the price system, and a vivid description of the necessity for adopting measures which will keep the price level within bounds. This means a level of taxes and of savings drawn from the public sufficient to prevent consumers from trying to spend more than the available volume of consumer goods is worth at current prices. There is complete agreement by all eighteen authors that in a modern war taxes and savings, forced or voluntary, must be vastly greater than ever before, indeed substantially greater than anything the Government has yet proposed. Furthermore, the controversy which raged in the early days of the Defense Program as to whether inflation should be prevented by the direct methods of price control and rationing or the indirect methods of fiscal policy is in the main significantly absent from these pages. It appears to be generally recognized that all the economic weapons in the federal arsenal must be employed in a comprehensive fashion.

Taking this very important set of first principles for granted, the remaining sixteen essays concern themselves with the detailed implementation of the objectives set forth by Messrs. Warren and Jones. Part Two consists of a single piece by Frank E. Seidman on the influence of excess profits taxation on business policy. While accepting the principle of excess profits taxation, Mr. Seidman points to many ways in which, he alleges, the present law is inequitable. Thus, he argues that the bases set up for exemption, which insure large profits for many war industries, will also throttle some of the smaller, more efficient firms.

Part Three deals with the difficult issues involved in deciding what kinds of taxes and what sorts of borrowing will be most equitable and most effective in preventing inflation. Denzel C. Cline, discussing general sales taxes and selective excises, assembles a good deal of information and brings out some of the crucial issues, but fails to meet them squarely with vigorous recommendations. Alzada Comstock presents a strong case for the inadequacy of income and profits taxation to prevent inflation unless they are used in conjunction with price control and rationing. Simeon E. Leland, in a very competent and well documented discussion of income taxes versus sales taxes, concludes with a set of clearly formulated proposals involving selective excise taxes to reduce consumption of particular commodities combined with greatly increased income taxes to cut general purchasing power. Only if these means prove inadequate does he urge a general sales tax. A plan for a flat rate income tax on all incomes to be collected at the source is outlined by Harley L. Lutz, who appears still to have reservations about the basic principle of progressive taxation; while forced loans and social security taxes are considered by Albert Gailord Hart. The latter emphasizes the fact that the only really important objective is a vigorous and immediate reduction of purchasing power. He feels that the source-deducted income tax is in many ways better than forced savings, but points out that if the latter is politically more acceptable it should by all means be tried. Charles Cortez Abbott presents a plan for forced savings by debtors, which would be combined with incentives for them to repay their debts, and E. Gordon Keith presents a good review of the conditions, by now familiar, in which government borrowing is anti-inflationary.

The outstanding characteristic of this section is that no pitched battles whatsoever are waged. There are differences of interest and of emphasis, but the over-all impression left by these seven articles is that the authors would agree on the following points: The Government must act much more vigorously than it has to date to reduce purchasing power and to control prices. No single instrument of inflation control will be adequate. Heavy taxes should be imposed. For the most part income taxes are to be preferred to sales taxes, though some use will have to be made of both. Income taxes must be so designed that they will act more quickly and positively in response to changes in income, and will not be too costly to collect from the lower income brackets. A withholding tax of some sort should be designed for this purpose. If taxes are politically impossible to impose in sufficient quantity, they may be sweetened by converting some of them into forced loans.

But whatever techniques are adopted they must be comprehensive, and on a scale sufficient to be effective.

The essays in Part Four are somewhat more technical discussions of special tax problems produced by the war effort. Walter W. Heller presents a very welcome analysis of the various methods which might be used in collecting income taxes promptly in wartime, and concludes with a detailed plan. Charles L. Kades and Chester B. Pond come to nearly identical conclusions concerning the proper relations between state and federal taxation, while Charles P. White considers the increasingly important problem of the kind and volume of payments which the Federal Government might properly make in lieu of local taxes on its property.

Parts Five and Six deal with the experience of other countries and with tariffs and international relations respectively. Brinley Thomas and William H. Wynne indicate how Britain and Canada have found it necessary to adopt over-all comprehensive programs of inflation control very similar to that which emerges from the recommendations of the earlier essays in this book. Both countries have severe price control, a level of taxation much higher than our own, and a much more vigorous program of direct income controls. These two chapters provide empirical evidence to support the common thesis developed in earlier pages. The last two chapters written by Benjamin Wallace and Grayson Kirk are somewhat off the subject of the other essays, being devoted to a discussion of the interrelation of tariffs and national security. It is agreed that tariffs can be reduced or removed only if a political climate of security for all nations can be established.

This reviewer has only one fault to find with the volume as a whole. Remarkably little attention is devoted to the domestic economic problems which will plague the economy after the war as a result of wartime financing. The problem of preventing inflation during a war, when the entire nation can be mobilized behind a no-spending program by the fire of patriotism, is a simple one compared to the difficulties of restraining a burst of relieved expenditure at the conclusion of hostilities. How can the Government restrict the wholesale liquidation of War Savings Bonds at this time without pushing the prices of other Government Securities down so far as to endanger the solvency of the banking system? How can the Government control the timing of the repayment of wartime borrowing so as to make it coincide with a postwar slump and not a postwar inflation? These are vital matters and it is regrettable that so little attention is currently being given them.

But in spite of this omission, we should be grateful indeed for this evidence that economists can, in a time of crisis, agree on a prescription. It is the more surprising in view of this unanimity that Congress and the Administration have proceeded so timidly to date in the construction of a really vigorous tax program. As Mr. Warren says:

> "While we applaud the expressions of academicians, publicists, and officials as being admirable statements of the function and scope of contemporary war finance, two things remain to be seen: (1) whether our responsible agencies (public and private) have the capacity to translate into effective action principles which they have, so to

speak, learned by hearsay or derived from their own cerebrations rather than out of bitter personal experience; and (2) whether the American public, which is, in economic and pecuniary matters, much less a community or commonwealth than a federation of tightly organized, mutually jealous, and politically powerful groups, will be willing to accept these principles."

MAX MILLIKAN†

LAW AND PEACE IN INTERNATIONAL RELATIONS. By Hans Kelsen. Cambridge: The Harvard University Press, 1942. Pp. xi, 181. $2.00.

THE present volume comprises a series of lectures given by the famed founder of the Pure Theory of Law as Oliver Wendell Holmes Lecturer at the Harvard Law School in March 1941; the result constitutes one of the most original contributions to the burning question of the causes underlying the failure of the League of Nations to preserve international peace and the future replacement of its faulty machinery.[1] The Geneva system broke down, so the author believes, chiefly because its framers disregarded the law of evolution in international relations. The Covenant placed the Council, an executive organ, not the Permanent Court of International Justice, at the center of its organization; thus the attempt was made to jump ahead rather than to take merely "the next step" in the development of international law. The author sees a compelling analogy in the growth of law within the State which shows that the centralization of the judiciary precedes the centralization of legislative and executive power in the process of evolution from a lower to a higher stage of legal organization.

This analogy is, of course, justified only if international law is "law" in the same sense as the rules of national law whose pattern of evolution it is presumed to follow. The author's first concern, therefore, is to prove that both national and international law are social orders of the same type. Reduced to its essential elements, law is defined as an order which assures the peaceful living together of its subjects by monopolizing the use of force as a reaction against illegal acts, as a sanction against a delict. That is precisely the rôle assigned to force in international law, whether employed by way of reprisals or by waging war. Theory and practice agree that reprisals are a means of compulsion against a State which has committed an internationally wrongful act. Less clear, however, is the function of war within the system of international sanctions. Those who adhere to the doctrine of the *bellum justum,* viz., the concept that wars are permissible only for the redress of an injury suffered, will find little or no difficulties

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1. Some of these views had already been expressed by the author in an earlier study on THE LEGAL PROCESS AND INTERNATIONAL ORDER (1935). See also his address *Essential Conditions of International Justice* (1941) PROC. AM. SOC. INT. L. 70 *et seq.*

in interpreting war as an "arm of the law" or a remedy against a legal wrong. The opposite and at present still prevailing view, according to which a State may proceed to war against any other State on any ground without violating general international law, makes such interpretation impossible. Without choosing between those two views, although indicating a certain preference for the theory of the just war, the author merely states that international law, lacking a proper organ charged with the application of its norms in concrete cases, authorizes the States to take the law into their own hands whenever they have reason to believe that their rights and interests have been wrongfully interfered with. In other words, general international law is characterized by the legal technique of self-help.

From this realization that war in the international legal order performs the function attributed to individual blood revenge (vendetta) in primitive society, the conclusion is derived that international law is still in the early stages of its evolution. Further evidence of its primitive nature is found by comparing its technique with that of the law within the State. Law has here achieved its highest degree of centralization, first with respect to the application of legal norms, to be followed by the institution of central organs charged with the creation and execution of the law. The international community of States, on the other hand, is characterized by complete decentralization. Its legal norms are created chiefly by individual treaties between the States. In the absence of international courts, the decision as to the circumstances conditioning the application of international law is left to the parties. Finally, the execution of the sanction is decentralized by the operation of the principle of self-help.

If progressive centralization is the evolutionary principle of law, conscious efforts to reform the international community with a view to the promotion of peace must start with the question what direction the centralization should be given in its constitution. Centralization of the law-creating function is rejected because it would lead to the establishment of a super-state, which is as yet a political impossibility. The next step in shaping "a legal reality which from a certain point of view — that of the ideal of peace — is regarded as an improvement upon the present state" is the institution of an international court with compulsory jurisdiction. "Nature makes no jump; and neither can the law."

The author's method of approaching the problem of international peace by analyzing the structure and present stage of development of international law as the condition precedent to reform proposals serves to reaffirm faith in the reality of traditional international law. This is particularly needed in view of the rising tide of idealistic schemes for world organization which has followed a widespread disappointment with the existing international order. Much as technical deficiencies might have contributed to the eventual collapse of the League, the Covenant, embryonic and imperfect in many respects, could have formed a working basis, had its application not been constantly thwarted by the game of power politics which its principal signatories continued to play.[2] Even the establishment of an international judi-

2. For further discussion on this point see KEETON AND SCHWARZENBERGER, MAKING INTERNATIONAL LAW WORK (1939) 166 ff.

ciary as the next step on the road to a peaceful international order will fall short of its goal, if political and economic obstacles to a genuine community of States remain. The danger of violent attacks on the international system, however, will be greatly diminished, and law will achieve supremacy in the relations among States, if legitimate aspirations can be satisfied through an adequate machinery of peaceful change.

JOACHIM VON ELBE†

CONQUEST AND MODERN INTERNATIONAL LAW: THE LEGAL LIMITATIONS ON THE ACQUISITION OF TERRITORY BY CONQUEST. By Matthew M. McMahon. Washington: The Catholic University of America Press, 1940. Pp. vi, 233. $2.00.

THE discussion of conquest is timely in a world convulsed by armed conflict and longing for peace. Interest is high not merely in the practical effect of conquest but also in the world's aversion to the institution of conquest as a means of acquiring new territory or regaining lost lands. Mr. McMahon's interest is primarily, as he puts it, in "the legal nature of modern conquest." (p. *v*).

The development of his thesis is in keeping with this limitation. His introductory chapter is devoted to a discussion of the varying definitions of conquest and its legal nature, which includes a brief treatment of *pacta sunt servanda*. He turns then to an historical survey of theory, practice and modern opinion. Here he has conveniently collected and arranged the opinions of the more important experts in the field and the traditional European examples of conquest problems, such as the partition of Poland, the Schleswig-Holstein and Hesse-Cassel cases. The judicial treatment of conquest problems is limited to Anglo-American cases, and the Palmas Island case before The Hague Tribunal. Mr. McMahon finds treaty limitations upon the right of conquest in the 1907 Hague Conventions, especially No. 2, the Covenant of the League of Nations, the Nine Power Treaty, the Briand-Kellogg Pact, and the many Pan American contributions. The chapters on non-recognition and non-intervention are based chiefly upon League and United States experience.

Mr. McMahon's conclusion that "the growth of peaceful change and the legal restrictions on the use of force in the relations of states have tended to make the act of conquest illegal" (p. 214) strikes a strangely fanciful note in today's sorry world. He finds encouragement in "the extraordinary growth of international legislation, which is the basis of order in the international society." The deceptive nature of the paper record has long been apparent in fields of national law. The idealistically conceived law often collects dust, if not disparagement, in national living. Its parallel exists also in international law. The universal desire for the disappearance of war has been written into international paper; but neither individuals, nor states,

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nor international organizations have yet had the courage to put to real and effective test the machinery which they have designed, because desire has outrun possible performance. Thus, the paper record of formal renunciation of war and conquest, which Mr. McMahon has skilfully built up, is superficially encouraging, but there is ample evidence of its fragile and illusory nature. The curbing influences of the reservations written into the Kellogg Pact, the difficulties implicit in the definition of a just war and in permitting national definition of self-defense, and the limitations born of the Japanese and British "Monroe doctrines" have often been demonstrated in the past twenty years. The failure of adjustment of territorial problems under the Covenant, and the frustration in practice of the doctrines of sanctions and non-recognition, through evasion and legal artifice, have likewise been frequently shown. If there is to be any advance toward a working solution of the world's ills, if and when the present conflict ends, it will be achieved not merely through the study of international paper, but also through study of international conduct and the correction of philosophies which gave birth to such friction in international living. This essential part of the problem Mr. McMahon has not met and answered and, because he has not, his conclusions lack force and conviction.

PHOEBE MORRISON†

AMERICAN REGULATION OF ARMS EXPORTS. By Elton Atwater. Endowment for International Peace, Monograph Series, Division of International Law, No. 4. Washington, 1941. Pp. viii, 287. $2.00.

PROFESSOR Atwater has filled the desperate need for a competent monograph on this confused and vitally important subject. He takes the reader back into the diplomatic history of the United States for the origin of governmental regulation of arms exports, which many people first associate only with the neutrality legislation of 1935. After stressing a century and a half of "Jeffersonian" policy of no regulation, he shows how President Theodore Roosevelt, acting under his power as commander-in-chief of the army and navy, first administered an embargo (it was more like a blockade, we suggest) of arms and munitions of war from the United States to revolutionary elements which were obstructing the Dominican Government's arrangements for a United States customs receivership. This executive action was the first instance of peace-time regulation of the export of arms and munitions. The next step was the joint resolution of March 14, 1912, which gave the President discretionary power, with such limitations and exceptions as should seem expedient to him, to limit the export of arms and munitions of war to any American country where conditions of violence might be promoted by the use of them. President Taft used this power to deny exports of munitions to Madero's enemies in Mexico, and Woodrow Wilson used it to support constitutional governments there, as he identified them to suit his

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idealistic political purposes. Since Woodrow Wilson's time the power has been used by Presidents (in the case of Mexico, Nicaragua, Honduras, Cuba and Brazil) to shut off the flow of arms and munitions of war to consignees not authorized by the established governments of certain Caribbean states, and sometimes to established governments not properly amenable to United States policy.

The purpose of the law of 1912, the author emphasizes, was to discourage revolutions and promote the stability of states in a region where the United States was vitally interested for its own security. It has not been extended to other American states, except in the case of Brazil in 1930, and then it was "theoretically" under the obligations of the Inter-American Treaty on the Duties and Rights of States in the Event of Civil Strife (Havana, 1928), which provides for the embargo of arms and munitions of war to revolutionary elements within the states of the contracting parties unless belligerency has been recognized. This treaty has brought the United States policy of 1912 a very considerable way toward being a principle of inter-American public law. It has been ratified by the United States and by twelve other American Republics, including Mexico and Brazil. In the opinion of the reviewer it deserves more emphasis than the casual mention it receives in this treatise.

The Joint Resolution of January 8, 1922, added to American states those countries in which the United States enjoyed extraterritorial rights, as regions to which the President might embargo the export of arms and munitions of war. Here Dr. Atwater sees an effort to cooperate with other powers to dry up revolutionary conditions in China rather than a desire to extend to the Far East any Latin-American, or rather Caribbean policy. The resulting embargo (1922–29) was imperfectly successful, because of faulty international cooperation.

The author carefully reviews the movement, originating with Secretary of State Stimson in 1933, to give the President a discretionary power to prevent the export of arms and munitions of war to "aggressor" states, and the debates over this proposal. In the case of the Chaco War, Congress was successful in insisting upon an impartial embargo against both belligerents rather than against the adjudged aggressor. The resulting United States embargo was on the "sale" rather than the "export" of arms and munitions of warfare, and the author considers this to have been an undignified and unnecessary expedient of getting around "nineteenth century" treaties of commerce with Bolivia and Paraguay which prohibited discriminatory embargoes. Further, it weakened the embargo.

In the case of the neutrality legislation of 1935–39, in which for the first time the United States relied on the embargo as a means of keeping the country out of war, Congress again prevailed on the executive to the extent of requiring that any embargo of arms, ammunition and implements of warfare be impartially applied to all belligerents; but the author rightly emphasizes the enormous significance of the discretionary power which the President quickly found in the conventional wording "whenever the President shall find." This enabled President Roosevelt to proclaim neutrality, and the resulting mandatory embargo of arms, ammunition and implements

of warfare against both belligerents, in the case of the Italo-Ethiopian War of 1935, but not in the case of the far greater Sino-Japanese War of 1937. The author concludes that the President, if he happens to agree with Congress as to the desirability of neutrality and consequent embargo in a given situation, has sufficient discretionary or assumed authority to have his way, whether by the loophole afforded by the wording of the law, by his way of enforcing the law, or by the imposition extra-legally of "moral embargoes". The reviewer would agree that the President does have the better of Congress in the administration of this legislation — up to a certain point. But if he had refused to "find" a war in existence in Europe in September, 1939, as he had refused to find one in the Far East in 1937, he might have run the danger of impeachment, so unanimously set was Congressional and general public opinion on staying neutral and keeping out of war.

The author goes rather hastily over the debate on neutrality legislation from 1935–39. His conclusion seems to be that the Neutrality Act of 1939 was a departure from neutrality. Under cover of neutrality and a professed desire to keep out of war its advocates disguised their real purpose, now avowed, to help the democracies by supplying them with arms to defend themselves against conquest. Both advocates and opponents of repeal of the embargo confused the legal status of neutrality with the diplomatic effects of neutrality. Given the repeal of the arms embargo in 1939, the author finds the United States without any fixed policy regarding the regulation of arms exports beyond keeping them under control and license, and not allowing them to go to any friendly country without the approval of its established Government. These policies he favors, but he remains skeptically non-committal about any settling of policy or refusing exports to "nations viewed as 'aggressors'" while permitting them to 'victims of aggression.'

This objective study adheres to all the canons of conscientious scholarship. If its frequent summaries and repetitious language seem persistently tautological, they nevertheless have the effect of thoroughly drilling the subject into the reader's mind by the time he finishes the book. Again the Carnegie Endowment is to be congratulated on publishing an important volume. It is helpful to have pointed out the dangers, as well as the advantages to the cause of peace that can flow from embargoes of arms, ammunition and implements of warfare. The book was published before Pearl Harbor.

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